

### REMARKS

Reconsideration of the application is requested in view of the above amendments and the following remarks. Claim 35 has been canceled. Claims 1, 3, 9, 12, 14, 23, 29, 37, 43 and 48 have been amended. The amendments to claims 1, 12, 23 and 37 are supported at page 12, lines 12-24 and Figure 6 of the present application. The amendments to claim 3 and 14 have been made to correct formal matters only. The amendments to claims 9 and 48 are supported at page 7, line 22 to page 8, line 2 of the present specification. Claim 29 has been amended to include the limitations of canceled claim 35. The amendments to claim 43 are supported by at least Figures 1, 2 and 4 of the present application. No new matter has been added.

### § 102 Rejection

Claims 1-3, 5, 7, 11-14, 16, 18, 22, 23, 25, 28, 29, 31, 32, 36, 37, 39, 40, 43, 45, and 46 were rejected under 35 U.S.C. § 102(b) as being unpatentable over Pyper, U.S. 1,382,229. As noted above, claim 29 has been amended to include the subject matter of claim 35, rendering this rejection moot as to claim 29 and the claims that depend from it. Applicant respectfully traverses this rejection.

Pyper discloses a display device having a plurality of panels 15, 16, 17 with an aperture formed there through for visualizing a portion of an animated disk 20. The disk 20 is oriented vertically and is rotatable about a horizontal axis with air flow from a fan 29. A linkage assembly 21-25 may move the disk 20 into different horizontal and vertical positions, but the linkage assembly 21-25 is not "adjustable about a vertical axis to move the flame element," as required by claims 1, 12, cannot move "the flame element from a fixed position about a vertical axis," as required by claims 29, 37 and 43, and cannot rotate "the flame element about a vertical axis," as required by claim 23.

The rejection states that the axis of adjustment elements 23 or 25 could be vertical when the back or front surface of the device is either secured or supported on a horizontal surface (i.e., attached to a ceiling, supported on a desk or table, during shipping, etc.). Applicant respectfully traverses this assertion. Pyper fails to disclose use of the display device in any other orientation but the upright orientation of the display device shown in Figures 1-3 of Pyper. Use of the Pyper's display device on the ceiling or on the floor is contrary to the intended use of the Pyper device as a "sign". Further, positioning a fireplace display on the ceiling or in a position laid on

its back on the floor would be an improper display of a fireplace that is outside of the intended use of the sign disclosed by Pyper. Therefore, such an assertion in the rejection is improper. Withdrawal of the rejection is respectfully requested.

Further to the above, Pyper fails to disclose "a blower configured to provide moving air that adjusts the moving means about the vertical axis and alters a position of the flame element," as required by claim 1. Pyper also fails to disclose "a moving means including a vertical axis of rotation that is concentric with the flame element vertical axis of rotation, the moving means being coupled to the flame element and configured to rotate the flame element," or "a mechanical device coupled to the flame element that concentrically rotates the flame element about a vertical axis of rotation of the mechanical device," because the adjustment features 21-27 disclosed by Pyper do not rotate the flame element.

Pyper also fails to disclose "moving the flame element with an air flow provided by the blower by contacting the flame element with moving air provided by the blower and by contacting the at least one fan blade with moving air from the blower to move the flame element about the vertical axis." The animating disk 20 disclosed by Pyper is rotated about a horizontal axis defined by bar 24 as a result of a breeze created by fan 29 that contacts vanes 31. However, the breeze created by fan 29 does not separately contact the disk 20 to move the disk 20.

Pyper further fails to disclose "disposing the flame element viewable to the observer within the chamber through only one of the plurality of enclosure panels," as required by claim 43. The enclosure in which the animating disk 20 is disposed in Pyper is defined by panels 10, 11, and 12, and a front panel is further defined by a combination of panels 15, 16 and 17. As a result, the disk 20 is viewable through a plurality of panels, not through only one of the plurality of panels, as required by claim 42.

Further, Pyper fails to disclose a log set as required by claim 11. Pyper illustrates in Figure 1 an image of a fire provided on a poster. At the base of the flames shown in Figure 1 is a pile of coal as explained at page 2, line 12 of Pyper. Further, even if the poster in Pyper did illustrate logs, an image of a log set is distinct from a log set structure itself.

Pyper further fails to disclose "the flame element comprises a single piece of substantially flat material having a flame shape," as required by claims 5 and 16. The rejection asserts that animating disk 20 is a flame element. Disk 20 is in the shape of a circular disk, which shape is not a flame shape.

In view of the above, Applicant submits that Pyper fails to disclose every limitation of claims 1-3, 5, 7, 11-14, 16, 18, 22, 23, 25, 28, 39, 40, 43, 45, and 46. The allowability of claims 29, 31, 32, 36 and 37 will be discussed in further detail below.

### §103 Rejections

Claims 1-3, 7, 8, 12-14, 18, 19, 23, 25, 26, 28, 29, 31-33, 37, 39-41, 43 and 45-47 were rejected under 35 U.S.C. §103(a) as being unpatentable over Harrison, US 6,461,011 in view of Quigley, US 1,945,072. As noted above, claim 29 has been amended to include the limitations of canceled claim 35, rendering this rejection moot as to claim 29 and the claims that depend from it. Applicant respectfully traverses this rejection.

Harrison discloses a flame simulating device that includes a housing 12, an elongate flame-shaped piece of collapsible material 14, a lamp 16 for illuminating the material 14, a fan 18, and an inner housing 20. The material 14 is viewable through any of the panels of the housing 12 (see col. 3, lines 44-48 of Harrison). The material 14 maintains a fixed position attached to the top of inner housing 20. Moving air from the fan 18 causes the material 14 to maintain a generally upright position.

Quigley discloses a display apparatus that includes a box 2 that supports a small table 7 and article 8. A motor 23 rotates a worm 22 that engages a worm wheel 21 that rotates a vertical shaft 20 that has a pinion 19 coupled to an end thereof. The pinion contacts a gear 18 that is coupled in a non-concentric way to the table 7 (see Figure 5 of Quigley). Thus, the central axis of the table 7 is not concentric with the worm 22 or the shaft 20, and rotation of shaft 20 causes the table to both rotate and move towards and away from the panels 4-6.

Neither Harrison, Quigley, or a combination of these references discloses or suggests "a blower configured to provide moving air that adjusts the moving means about the vertical axis and alters a position of the flame element," as required by claim 1, "a moving means including a vertical axis of rotation that is concentric with the flame element vertical axis of rotation," as required by claim 12, or "a mechanical device coupled to the flame element that concentrically rotates the flame element about a vertical axis of rotation of the mechanical device," as required by claim 23.

Harrison and Quigley also fail to disclose or suggest "moving the flame element with an air flow provided by the blower by contacting the flame element with moving air provided by the

blower and by contacting the at least one fan blade with moving air from the blower to move the flame element about the vertical axis," as required by claim 37. Harrison and Quigley fail to disclose or suggest both a fan blade and a separate blower for moving a flame element.

Harrison and Quigley further fail to disclose or suggest "disposing the flame element viewable to the observer within the chamber through only one of the plurality of enclosure panels," as required by claim 43. Quigley does not disclose a chamber. As noted above, the member 14 disclosed by Harrison is viewable through multiple panels of the enclosure 12.

In view of the above, Applicant submits that Harrison and Quigley fail to disclose or suggest every limitation of claims 1, 12, 23, 37 and 43, and the claims that depend from them. The allowability of claims 29, 31-33 and 37 will be discussed in further detail below.

Claims 9, 20, 27, 34, 42 and 48 were rejected under 35 U.S.C. §103(a) as being unpatentable over Harrison in view of Quigley and further in view of Butterfield, US 4,965,707. Applicant respectfully traverses this rejection.

As discussed above, Harrison and Quigley fail to disclose or suggest every limitation of claims 1, 12, 23, 29, 37 and 43. Butterfield fails to remedy the deficiencies of Harrison and Quigley as they relate to claims 1, 12, 23, 29, 37 and 43. Therefore, claims 9, 20, 27, 34, 42 and 48 are allowable for at least the reason they are dependent on an allowable base claim. Applicant does not concede the correctness of this rejection.

Further to the above, Applicant submits that Butterfield fails to disclose "treating an edge portion only of the flame element with a stiffening material to reduce fraying of the flame element," as required by claims 9 and 48. Although Butterfield discloses adding a reflective coating to a flame element, Butterfield fails to disclose or suggest coating only the edge portion of the flame element or an advantage of the coating related to reducing fraying. Therefore, claims 9 and 48 are allowable for these additional reasons.

Claims 10, 21 and 35 were rejected under 35 U.S.C. §103(a) as being unpatentable over Pyper in view of Hecker, U.S. 5,426,879. Applicant respectfully traverses this rejection.

Pyper discloses an enclosure that is defined by rear and top panels 10, 11, a frame 12, and a plurality of front panels 15-17. The panels 15-17 define an opening having the shape of a flame and a mesh of closely spaced perforations through which a portion of the animating disk 20 is visible. Pyper fails to disclose or suggest the need or any means of providing a reflection of the flame images provided on the disk 20. Even if the top and rear panels 10, 11 and the sheet

metal plate 17 of Pyper did provide some type of reflection of the disk 20, Pyper fails to disclose or suggest how that reflection could be visible through the panels 15-17. The enclosure defined by panels 10, 11, 12, and 15-17 where the disk 20 resides has only one viewable opening 18, and that opening is covered by disk 20. Therefore, Pyper fails to disclose or suggest an enclosure that includes "a front panel, a back panel, a bottom panel, a top panel and side panels . . . wherein the back panel and side panels comprise a partial mirrored surface to produce a reflection of the flame element," as required by claims 10, 21 and 29, and the claims that depend from them. Withdrawal of the rejection is respectfully requested.

#### Summary

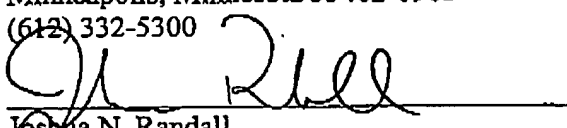
In view of the above amendments and remarks, Applicant respectfully requests reconsideration of the application in the form of a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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